

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: DAVOL, INC./C.R. BARD,
INC., POLYPROPYLENE HERNIA
MESH PRODUCTS LIABILITY
LITIGATION**

Case No. 2:18-md-2846

**Judge Edmund A. Sargus, Jr.
Magistrate Judge Kimberly A. Jolson**

This document relates to:

Waddell v. Davol, Inc., et al.

Case No. 2:20-cv-5506

ORDER

This matter is before the Court on Plaintiff's Motion to Substitute Party. (ECF No. 4.)

Rule 25 provides that, “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party.” Fed. R. Civ. P. 25(a)(1). “A motion for substitution may be made by any party or by the decedent’s successor or representative.” *Id.*

Plaintiff Brian Waddell passed away on June 16, 2023. (ECF No. 4.) Plaintiff's counsel filed a Motion to Substitute Party on August 11, 2023. (*Id.*) The Motion claims that Jennifer L. Waddell is the power of attorney for Brian Waddell after his death and should be substituted as the plaintiff in this case. (*Id.*) Pursuant to Case Management Order (“CMO”) No. 36, a motion to substitute a deceased plaintiff must “address whether the proposed substitute is a representative of the deceased plaintiff’s estate, as opposed to the deceased plaintiff’s heir or next of kin, regardless of whether the plaintiff died testate or intestate. If the moving party’s position is that the proposed substitute is not required to be a representative of the deceased plaintiff’s estate under applicable state law, the Motion to Substitute must include relevant authority supporting that position.” (Case No. 18-md-2846, ECF No. 660.) On January 5, 2024, the Court ordered Plaintiff's counsel to file an amended motion or a supplement to the Motion within 14 days pointing to any authority

indicating that, under Arizona law, a power of attorney can survive the death of the principal. (ECF No. 5.) However, no amended motion or supplement has been filed.

Because the Motion did not address whether Jennifer L. Waddell is a representative of Brian Waddell's estate, nor did it present an argument with supporting authority that under Arizona law a power of attorney can survive the death of the principal, the Motion to Substitute (ECF No. 4) is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

1/23/2024
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE